BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

STEVEN H. RICHMOND)
Claimant)
VS.)
) Docket No. 1,017,947
GOODYEAR TIRE & RUBBER CO.)
Respondent)
AND)
)
LIBERTY MUTUAL INSURANCE CO.)
Insurance Carrier)

<u>ORDER</u>

Respondent and its insurance carrier appealed the October 8, 2004 preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

Issues

Claimant alleges he sustained a series of traumas to his right shoulder through April 21, 2004, working for respondent. In the October 8, 2004 Order for Compensation, Judge Avery held claimant's right shoulder injury arose out of and in the course of claimant's employment with respondent. Accordingly, the Judge granted claimant's request for workers compensation benefits.

Respondent and its insurance carrier contend Judge Avery erred. They argue claimant injured his right shoulder at home reaching for a soft drink can. In the alternative, they argue reaching for the soft drink was a subsequent accident. Consequently, respondent and its insurance carrier request the Board to reverse the Order for Compensation and deny claimant's request for benefits.

Conversely, claimant contends the October 8, 2004 Order for Compensation should be affirmed.

The only issue before the Board on this appeal is whether claimant's right shoulder injury was caused by a series of traumas sustained at work for respondent or caused by reaching for a soft drink can while at home.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board concludes the Order for Compensation should be affirmed.

The Board finds it is more probably true than not claimant injured his right shoulder working for respondent, which manufactures tires. For approximately four years, claimant has built belt and tread packages. As claimant described the job, it is physical, repetitive, and requires overhead activities.

On the other hand, the Board concludes the evidence fails to establish that claimant sustained a new and separate accident or injury to his right shoulder when, sometime in May 2004, he reached for a soft drink at home and felt increased symptoms in his right shoulder. At this stage of the claim, the evidence fails to establish that the increased symptoms claimant experienced at home reaching for a soft drink constituted a new and separate accident as opposed to being a natural consequence or sequella of the repetitive traumas and injury he sustained at work.

The Board affirms the Judge's finding that claimant injured his right shoulder in an accident that arose out of and in the course of his employment with respondent.

As provided by the Workers Compensation Act, preliminary hearing findings may be modified upon a full hearing on the claim.¹

WHEREFORE, the Board affirms the October 8, 2004 Order for Compensation entered by Judge Avery.

Dated this day of December 2004.

IT IS SO ORDERED.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
John A. Bausch, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ K.S.A. 44-534a.